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**AFFIDAVIT**

I, David Gardner, a Special Agent with the Federal Bureau of Investigation (FBI), Cleveland Division, being duly sworn, depose and state as follows:

1. Affiant has been a Special Agent with the FBI for 23 years, stationed in Greensboro, North Carolina, Budapest, Hungary, and Cleveland and Sandusky/Elyria, Ohio, and has received training at the FBI Academy in Quantico, Virginia. Affiant has conducted investigations that led to successful prosecutions involving child exploitation, fraud, federal drug and firearms laws, and crimes of violence. Affiant is currently assigned to the Sandusky/Elyria Resident Agency of the FBI, which is responsible for investigating federal matters in Erie, Huron, Lorain, Ottawa, Sandusky, and Seneca County, Ohio. As such, Affiant investigates crimes against children, which includes but is not limited to, receipt, and possession of child pornography, in violation of 18 U.S.C. §§ 2252 and 2252A. Affiant has also participated in the execution of many search warrants, resulting in the seizure of electronic devices containing child pornography. Affiant has a Bachelor's and Master's degree in accounting and business administration and worked in those fields for five years before becoming an FBI agent.

2. As a federal agent, I am authorized to investigate violations of the United States laws and to execute warrants issued under the authority of the United States.

3. I am investigating the activities of Joseph Sean McMicheaux (hereafter "McMicheaux"). As will be shown below, there is probable cause to believe that McMicheaux has engaged in activity constituting violations of Title 18, United States Code, §§ 2252(a)(2), Receipt of Visual Depictions of Real Minors Engaged in Sexually Explicit Conduct, and 2252A(a)(5)(B), Possession of Child Pornography. I am submitting this affidavit in support of an arrest warrant

authorizing the arrest of Joseph Sean McMicheaux, for activities which occurred in Lorain County, in the Northern District of Ohio, Eastern Division.

4. The statements in this affidavit are based in part on information and evidence provided by sworn Ohio law enforcement officers assigned to the NRPD; written reports about this case; examination of records from commercial and FBI databases, a review of body camera video provided to Affiant, and on my investigation of this matter. Since this affidavit is being submitted for the limited purpose of securing a Complaint, I have not included every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that Joseph Sean McMicheaux engaged in conduct in violation of Title 18 §§ 2252(a)(2) and 2252A(a)(5)(B).

#### **STATUTORY AUTHORITY**

5. This investigation concerns alleged violations of Title 18, United States Code, §§ 2252(a)(2), relating to material involving the sexual exploitation of minors.

- a. 18 U.S.C. § 2252(a)(2) and (b)(1) prohibit any person from knowingly receiving or distributing, or attempting or conspiring to receive or distribute, any visual depiction using any means or facility of interstate or foreign commerce, or that has been mailed or shipped or transported in or affecting interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer, or knowingly reproducing any visual depiction for distribution using any means or facility of interstate or foreign commerce, or in or affecting interstate or foreign commerce or through the mails, if the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct.

- b. 18 U.S.C. §§ 2252A(a)(5)(B) and (b)(1), which prohibits a person from knowingly possessing or knowingly accessing with intent to view, or attempting or conspiring to do so, any material that contains an image of child pornography, as defined in 18 U.S.C. § 2256(8), that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer, and at least one image depicts a prepubescent minor or a minor under the age of 12 years old.

#### **PROBABLE CAUSE**

6. In October 2022, North Ridgeville Police Department (NRPD) Detective Ryan Jones requested assistance from Affiant with the investigation of McMicheaux. Detective Jones provided investigative material, including a copy of the NRPD police report, a Cyber tip from the National Center for Missing and Exploited Children (“NCMEC”), body camera video from the search of McMicheaux’s residence on August 17, 2022, as well as other items. Affiant conferred with Detective Jones and reviewed the complete NRPD police file.

7. Affiant learned that on June 19, 2022, NCMEC received a Cyber tip (assigned # 127374815) from Microsoft<sup>1</sup>, that indicated a user of their services was engaged in activity related to on-line child exploitation. Cyber tip #127374815 referenced three files of confirmed

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<sup>1</sup> Microsoft is a multi-national technology company offering an array of services to individual and business customers, including mail (e.g., Hotmail, Outlook), messaging and VOIP (e.g., Skype), software programs (Office 365 suite), cloud-based personal and business storage and operational solutions (OneDrive, Azure). Personal devices (laptops, Surface tablets), gaming devices (Xbox), and developer apps and services. It is based in Redmond, Washington.

child pornography that Microsoft discovered were uploaded to their image sharing service, “BingImage.” Affiant knows that BingImage allows the search of photographs through keywords or through the uploading of the image itself. If a user were to upload an image, the BingImage service would in turn provide similar images to the image provided by the user.

8. Microsoft reported to NCMEC that the three files of child pornography were uploaded from Internet Protocol address 71.28.61.135. Image #1 was uploaded on June 19, 2022, at 1:40 a.m. eastern standard time (EST); Image #2 was uploaded on June 19, 2022, at 1:39 a.m. (EST), and Image #3 was uploaded on June 18, 2022, at 11:39 p.m. (EST). Detective Jones reviewed the three images and described them as follows:

- a. Image #1 depicts a prepubescent minor female, posing with her pants pulled partially down, completely exposing her vagina. The image is taken in a manner intended to elicit a sexual response in the viewer.
- b. Image #2 depicts a fully nude prepubescent minor female, lying on her right side. Her left knee is pulled up to her stomach and the image is taken from the angle of the female’s feet, exposing her anus and vagina. The image is taken in a manner intended to elicit a sexual response in the viewer.
- c. Image #3 depicts a fully nude prepubescent minor female. The image is taken from behind the minor female, as she is posing on her hands and knees, exposing her anus and vagina. The image is taken in a manner intended to elicit a sexual response in the viewer.

9. Affiant learned that NCMEC forwarded the Microsoft CyberTip to the Ohio Internet Crimes Against Children Task Force (ICAC)<sup>2</sup> because the Geo-Lookup of the IP Address utilized to upload the images resolved back to Elyria, Ohio. ICAC issued a subpoena to Windstream Communications, the service provider for IP address 71.28.61.135. Windstream responded to the subpoena and provided the following account information for IP address 71.28.61.135 for the dates and times associated with the uploaded images:

Start Date & Time: 3/2/2022 04:12:20

Stop Date & Time: 6/26/2022 23:09:40

Name: Joseph McMicheaux

Address: [Redacted], North Ridgeville, Ohio 44039

Phone: 198-117-XXXX [Redacted]

Account Type: Consumer-Fiber

Start Date: 2/16/2021

Account Status: In Service

10. Detective Jones searched the Ohio Law Enforcement Gateway (OHLEG) and confirmed that Joseph McMicheaux had a registered address of [Redacted], North Ridgeville, Ohio 44039. Detective Jones further identified that McMicheaux had a blue 2022 Volkswagen registered in his name at the same address.

11. On July 29, 2022, Detective Jones drove by the address and observed the blue Volkswagen registered to McMicheaux parked in the driveway. Detective Jones further reviewed the Lorain County Auditor's Website and confirmed that the residence located at [Redacted], North Ridgeville, Ohio was owned by McMicheaux. While Detective Jones was parked across the

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<sup>2</sup> ICAC purports to be a national network of sixty-one coordinated task forces dedicated to investigating, prosecuting, and developing effective responses to Internet crimes against children. The Ohio ICAC Task Force is represented by the Cuyahoga County Prosecuting Attorney's Office.

street from McMicheaux's residence, Detective Jones searched for but did not locate any unsecured Wi-Fi access in the area.

12. On August 16, 2022, Judge Mark Betleski, Lorain County Court of Common Pleas, authorized a search warrant for McMicheaux's residence in North Ridgeville, Ohio. The search warrant also authorized the seizure of computer devices, cellphones, computer files and other stored content for a "preview search" to "identify those items that contain child pornography". On August 17, 2022, at approximately 7:00 a.m., NRPD officers and ICAC investigators executed the search warrant. McMicheaux advised officers that he lived alone. McMicheaux was shown a copy of the search warrant and the purpose of the search was explained to McMicheaux.

13. McMicheaux was escorted to a mobile interview room while officers searched his residence. NRPD Lt. Petek advised McMicheaux of his Miranda rights and McMicheaux indicated that he wanted to cooperate with Detective Jones' questioning. McMicheaux was advised of how the NRPD became aware of images of child pornography in his possession. McMicheaux then admitted to having child pornography and stated that he habitually downloads (from the Internet) child pornography and prints off the images for his "own use." McMicheaux told officers that the majority of the child pornography files he possessed would be located on the purple computer in his bedroom.

14. During the search of McMicheaux's bedroom, Officers located numerous printed photographs of suspected child pornography in McMicheaux's computer desk and photos of suspected child pornography in McMicheaux's dresser. NRPD Lt. Petek later reviewed the printed photographs and found them to contain visual depictions of minors engaged in the lascivious exhibition of their genitals.

15. A purple Inspiron computer was also seized from McMicheaux's bedroom. ICAC investigators conducted a preview of the Inspiron computer and identified approximately fifty files of minors engaged in masturbation, cunnilingus, fellatio and the lascivious display of their genitalia.

16. In addition, NRPD seized various photos, including images of an unknown female, from McMicheaux's closet; a Western Digital hard drive and an Alcatel Tablet from the bedroom; a Sandisk 8 GB memory card from McMicheaux's dresser drawer; and one PNY 32 GB memory card from the computer desk. Affiant knows that the Western Digital hard drive is a storage device that can be used with the Inspiron computer. Affiant further knows that the Sandisk memory card and the PNY memory card can be used with the Inspiron computer or a camera to record images from the Inspiron computer.

17. On November 17, 2022, Detective Jones provided Affiant with the numerous printed photographs which were located throughout McMicheaux's bedroom. The numerous printed photographs were packaged as search items 2, 4 and 5. Affiant reviewed the numerous photographs and located twenty-one images of child pornography as defined below:

a. Affiant reviewed Item 2 and identified twelve photographs of females Affiant believes to be minors displayed in a lascivious manner in which their genitalia or anus could be observed. Below are descriptions of four of the photographs Affiant believes to be child pornography from item 2:

i. Photograph one was a printed photograph of five minor females standing next to each other completely nude with their vagina's in view.

Approximately two of the females are prepubescent and the other three are pubescent. The youngest female is holding a "1" and the next oldest is

holding a “2” continuing this pattern with the oldest minor female holding a “5”. The image is taken in a manner intended to elicit a sexual response in the viewer.

- ii. Photograph two was a printed photograph of a minor female approximately twelve years old lying on the beach completely naked with her vagina in view. The image is taken in a manner intended to elicit a sexual response in the viewer.
  - iii. Photograph three was a printed photograph of a different minor female approximately twelve years old that is standing on the beach completely naked with her legs spread exposing her vagina. The image is taken in a manner intended to elicit a sexual response in the viewer.
  - iv. Photograph four was a printed photograph of a prepubescent female lying on a bed completely naked with her legs spread and one leg up in the air exposing her vagina. The image was taken from the angle of the foot of the bed while the minor’s head was at the head of the bed. The image is taken in a manner intended to elicit a sexual response in the viewer.
- b. Affiant reviewed Item 4 and identified seven photographs of females that appear to be minors, displayed in a lascivious manner in which their genitalia or anus could be observed.
  - c. Affiant reviewed Item 5 and identified one photograph of a female Affiant believes to be a minor. In the photograph, the minor female is wearing only boots, a black cape, gloves, a mask, and a purple wig and is standing with her vagina displayed in a lascivious manner.



18. On November 17, 2022, the United States Magistrate Judge Jennifer Dowdell Armstrong, Northern District of Ohio, authorized a search and seizure warrant for the Inspiron computer; Western Digital hard drive; 8 GB memory card; 32 GB memory card; and Alcatel tablet (case number 1:22mj9255). On the same date, Affiant obtained these evidence items from Detective Jones and Affiant provided the Western Digital hard drive; 8 GB memory card; and 32 GB memory card to United States Customs and Border Patrol Intelligence Agent Jason Fullerton for processing by Cellebrite<sup>3</sup>. On November 18, 2022, Agent Fullerton provided Affiant with the Cellebrite reports for the 8 GB memory card and the 32 GB memory card. A Cellebrite report allows a user to review the images, videos, and other digital data and to “tag” or classify the items.

19. On November 23, 2022, Affiant reviewed the Cellebrite reports for the 8 GB memory card and the 32 GB memory card and “tagged” the items Affiant believed to be child pornography. A review of the 8 GB memory card determined the following:

- a. The memory card contained numerous images and videos which contained file paths consistent with the images and videos being taken by a “Nikon” camera.<sup>4</sup>
- b. A review of the images and videos identified that many of the images and videos were taken of images and videos on a computer screen.
- c. A review of the images located twenty-two images of child pornography. The images consisted of eleven images of females Affiant believes to be minors in which their vagina or anus were displayed in a lascivious manner, nine images of females Affiant believes to be minors engaged in sex acts, and two images in

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<sup>3</sup> Cellebrite is a digital intelligence company that provides tools for federal, state, and local law enforcement to collect, review, analyze and manage digital data.

<sup>4</sup> File paths specify the location of individual files.

which a minor's face (the same minor as in paragraph 8 described above) was morphed onto the body of a female whose vagina and anus were displayed in a lascivious manner. File information identified that these images were created between August and September 2019.

- d. A review of the videos located eight videos which Affiant classified as child pornography. The videos consisted of videos of a computer screen which was split into several simultaneous videos of females that appear to Affiant to be minors engaged in sex acts. File information for the videos indicate they were created on September 3, 2019.
20. Affiant further reviewed the Cellebrite report for the 32 GB memory card and determined that the memory card contained numerous image and video files with file paths consistent with the images and videos being taken by a "Nikon" camera. A review of the images and videos on the memory card revealed that many of the images and videos were taken of images and videos on a computer screen.
  21. A review of the image files located thirty-four images that depicted minor females displaying their vagina or anus in a lascivious manner. File information indicates these images were created between April and July 2022.
  22. A review of the video files revealed three videos of a computer screen which was split into several simultaneous videos of minor females engaged in sexual acts. File information indicated that these videos were created on January 27, 2022.
  23. The forensic review of the additional seized devices is ongoing.

**CONCLUSION**

24. Based on the aforementioned information, your affiant respectfully submits that there is probable cause to believe that Joseph Sean McMicheaux has engaged in activity constituting a violation Title 18, United States Code, §§ 2252(a)(2) and 2252A(a)(5)(B). Therefore, I am submitting this affidavit in support of an arrest warrant authorizing the arrest of Joseph Sean McMicheaux.

*David Gardner*

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David Gardner  
Special Agent  
Federal Bureau of Investigation

Sworn to this 14th day of December, 2022, via telephone after submission by reliable electronic means. [Fed. R. Crim. P. 4.1]

*JDC*

Jonathan D. Greenberg  
United States Magistrate Judge

